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had nothing to do with the bank failure. It is only fair that the relation of the sureties should be determined by the liability of their principals, for that was the measure of their assumption. Thus the surety of an assignee of a lease stands in the relation of principal to the surety of the lessee although both are answerable for the assignee's default. *Bender v. George*, 92 Pa. St. 36. Likewise the surety of a deputy sheriff who has misappropriated money received in his official capacity, has a prior liability compared with that of the surety of the sheriff. *Brinson v. Thomas*, 2 Jones Eq. (N. C.) 414. The more general surety holds a position like that of a guarantor of a bill or note, whose liability is secondary to that of all the parties on the instrument although some of them are only sureties. *Phillips v. Plato*, 42 Hun (N. Y.) 189; *Longley v. Griggs*, 10 Pick. (Mass.) 121. A further analogy is found where a public official with a general surety is required to furnish another surety for some special duty, in which case the general surety is not answerable at all for defaults in the special duty. *Columbia County v. Massie*, 31 Or. 292, 48 Pac. 694; *County Board of Education v. Bateman*, 102 N. C. 52, 8 S. E. 882; *State v. Young*, 23 Minn. 551.

TORTS — NATURE OF TORT LIABILITY IN GENERAL — LIABILITY FOR BREACH OF STATUTORY DUTY. — A statute imposed upon railroads the duty of fencing their tracks in certain cases. The defendant railroad failed to maintain its fence properly with the result that the plaintiff's cattle escaped and were lost. *Held*, that the railroad company is liable. *Stanley v. Atchison, Topeka, & Santa Fé Ry. Co.*, 127 Pac. 620 (Kan.). See NOTES, p. 531.

TRUSTS — NATURE OF TRUST RELATION — A TRUST DISTINGUISHED FROM AN EQUITABLE CHARGE. — The defendant and others, in conveying certain realty, provided in the deeds that the grantee should maintain and support the defendant for life and should reserve a room and bedroom for the defendant's use for life. The grantee mortgaged the property to the plaintiff who had knowledge of the defendant's rights. The plaintiff foreclosed the mortgage and sought to dispossess the defendant. *Held*, that the defendant may retain his possession. *Wolfe v. Croft*, 11 East. L. Rep. 532 (Nova Scotia).

The nature of the defendant's rights should be determined from the intent as apparent in the deed. *Hill v. Bishop of London*, 1 Atk. 617; *King v. Denison*, 1 Ves. & B. 260. If the instruments manifested a desire on the part of the grantors to have the defendant maintained out of part of the profits of the land, there would seem to be no difficulty in creating a trust of the whole land for this purpose. But in the principal case, in spite of the fact that the provision for maintenance is coupled with another which can only be a trust, the above intent does not appear. The grantee is intended to take beneficially, subject merely to a duty to support the defendant out of any fund at all. This is an equitable charge. *King v. Denison*, *supra*; *Loder v. Hatfield*, 71 N. Y. 92. Rather than requiring any technical words to create such a charge, the courts have gone very far in implying an intent to create them. *Harris v. Fly*, 7 Paige (N. Y.) 421; *Crawford v. Severson*, 5 Gill (Md.) 443. They may be created by deed as well as by will. See POMEROY, EQUITY JURISPRUDENCE, 3 ed., § 1244. In the principal case the promise was made directly to the defendant. But in the ordinary case of deeds the doctrine seems in substance to permit a beneficiary to sue on a contract for his benefit. The grantee, by accepting the conveyance, impliedly promises to follow the directions and thereafter is personally liable to support the grantor, who has also an equitable lien on the land, as security for his personal claim. *Brown v. Knapp*, 79 N. Y. 136; *Loder v. Hatfield*, 71 N. Y. 92. Since the mortgagee took with notice of the defendant's rights, the court rightly held that they would not be extinguished.